

SERVICE DATE – MAY 23, 2014

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB 55 (Sub-No. 734X)

CSX TRANSPORTATION, INC.—ABANDONMENT
EXEMPTION—IN BUTLER COUNTY, OHIO

Decided: May 22, 2014

CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 C.F.R. pt. 1152 subpart F—Exempt Abandonments, to abandon approximately 2.96 miles of rail line on its Northern Region, Louisville Division, Indianapolis Subdivision, between milepost BDA 0.0 and the end of the track at approximately milepost BDA 2.96 in Hamilton, Butler County, Ohio. Notice of the Exemption was served and published in the Federal Register on April 24, 2014 (79 Fed. Reg. 22,840). The exemption is scheduled to become effective on May 24, 2014.

On May 8, 2014, the City of Hamilton, Ohio (City or trail sponsor), filed a request for the issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act (Trails Act), 16 U.S.C. § 1247(d), and 49 C.F.R. § 1152.29, to provide time to negotiate with CSXT for acquisition of the right-of-way for use as a recreational trail and for rail banking. The City has submitted a statement of its willingness to assume financial responsibility for the right-of-way and has acknowledged that the use of the right-of-way for trail purposes is subject to future reconstruction and reactivation of the right-of-way for rail service, as required by 49 C.F.R. § 1152.29. On May 9, 2014, CSXT agreed to negotiate with the City for interim trail use.

Because the City's request complies with the requirements of 49 C.F.R. § 1152.29 and CSXT is willing to enter into interim trail use negotiations, a NITU will be issued. The parties may negotiate during the 180-day period prescribed below. If an interim trail use agreement is reached (and thus interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. See 49 C.F.R. § 1152.29 (d)(2) and (h).¹ If no agreement is reached within 180 days, CSXT may fully abandon the line. See 49 C.F.R. § 1152.29(d)(1). Use of the right-of-way for trail purposes is subject to any future use of the property for restoration of railroad operations.

¹ National Trails System Act and Railroad Rights-of-Way, EP 702 (STB served Apr. 30, 2012). Final rule effective May 30, 2012.

The City has also requested imposition of a public use condition. The City asks that CSXT be prohibited from disposing of the corridor, other than tracks, ties, and signal equipment, except for public use on reasonable terms, and that CSXT be barred from removing or destroying potential trail-related structures, such as bridges, trestles, culverts, and tunnels, for a 180-day period from the effective date of the abandonment authorization. According to the City, the corridor would provide an excellent recreational trail and provides important wildlife habitat and greenspace. The City states that it needs 180 days to assemble and review title information, complete a trail plan, and commence negotiations with the carrier.

As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use as a trail under 49 U.S.C. § 10905. See Rail Abandonments—Use of Rights-of-Way As Trails, 2 I.C.C.2d 591, 609 (1986). Under § 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision and notice approving or exempting the abandonment. To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 C.F.R. § 1152.28(a)(2). Because the City has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the May 24, 2014 effective date of the exemption.

When the need for interim trail use/rail banking and public use is shown, it is the Board's policy to impose both conditions concurrently, subject to the execution of a trail use agreement. If a trail use agreement is reached on a portion of the right-of-way, CSXT must keep the remaining right-of-way intact for the remainder of the 180-day period to permit public use negotiations. Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for any interested person to acquire the right-of-way that has been found suitable for public purposes, including trail use. Therefore, with respect to the public use condition, CSXT is not required to deal exclusively with the City, but may engage in negotiations with other interested persons.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the notice served and published in the Federal Register on April 24, 2014, exempting the abandonment of the line described above is modified to the extent necessary to implement interim trail use/rail banking as set forth below to permit the City to negotiate with CSXT for trail use for the rail line, for a period of 180 days from the service date of this decision and notice, until November 19, 2014, and to permit public use negotiations as set forth below, for a period of 180 days commencing from the May 24, 2014 effective date of the exemption, until November 20, 2014.

3. Consistent with the public use and interim trail use/rail banking conditions imposed in this decision and notice, CSXT may discontinue service and salvage track and related materials. CSXT shall otherwise keep intact the right-of-way, including potential trail-related structures such as bridges, trestles, culverts, and tunnels, for a period of 180 days (until November 20, 2014) to enable any state or local government agency, or other interested person, to negotiate the acquisition of the right-of-way for public use. If an interim trail use/rail banking agreement is executed before expiration of the 180-day public use period, the public use condition will expire to the extent the trail use/rail banking agreement covers the same portion of the right-of-way.

4. If an interim trail use/rail banking agreement is reached, it must require the trail sponsor to assume, for the term of the agreement, full responsibility for: (i) managing the right-of-way; (ii) any legal liability arising out of the transfer or use of the right-of-way (unless the sponsor is immune from liability, in which case it need only indemnify the railroad against any potential liability); and (iii) the payment of any and all taxes that may be levied or assessed against the right-of-way.

5. Interim trail use/rail banking is subject to possible future reconstruction and reactivation of the right-of-way for rail service and to the trail sponsor's continuing to meet its responsibilities for the right-of-way described in ordering paragraph 4 above.

6. If an interim trail use agreement is reached (and thus, interim trail use is established), the parties shall jointly notify the Board within 10 days that an agreement has been reached. 49 C.F.R. § 1152.29(d)(2) and (h).

7. If interim trail use is implemented, and subsequently the trail sponsor intends to terminate trail use on all or any portion of the right-of-way covered by the interim trail use agreement, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.

8. If an agreement for interim trail use/rail banking is reached by November 19, 2014, for the right-of-way, interim trail use may be implemented. If no agreement is reached, CSXT may fully abandon the line, upon expiration of the public use condition imposed here.

9. This decision and notice is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.